

Message Text

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INFO OCT-01 EA-10 ISO-00 EB-07 TRSE-00 SIL-01 LAB-04

COME-00 RSC-01 /026 R

DRAFTED BY L/OES/MBWEST:SCH

APPROVED BY RJBETTAUER

EB/TT/MA - SMITH (DRAFT)

TREASURY/CUSTOMS - GABLE (DRAFT)

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FM SECSTATE WASHDC

TO AMCONSUL MELBOURNE

CINCPAC HONOLULU HI

INFO AMEMBASSY CANBERRA

AMCONSUL SYDNEY

UNCLAS STATE 017385

CINCPAC FOR POLAD

E.O. 11652: N/A

TAGS: ELAB,AS

SUBJECT: REQUEST FOR INFORMATION TO ASSIST FEDERAL
JUDICIAL INQUIRY

REF: MELBOURNE 0065

1. PER REFTEL REQUEST, DEPT. HAS CHECKED ON STATUS OF
EXCEPTIONS TO SECTION 27 (SECTION 27 IS CORRECT CITE)
OF MERCHANT MARINE ACT OF 1920, 46 USC 883 AS AMENDED.
LAW MAKES PROVISION FOR NATIONAL DEFENSE WAIVER. IN
ADDITION, MERCHANT MARINE ACT AS AMENDED CONTAINS CERTAIN
LIMITED EXCEPTIONS.

2. ACT OF DECEMBER 27, 1950 (46 USC SECTION 1, HISTORICAL
NOTE) PROVIDES FOR A WAIVER OF NAVIGATION AND VESSEL INSPEC-
TION LAWS BY THE HEAD OF THE RESPONSIBLE AGENCY OR DEPART-
MENT UPON THE REQUEST OF THE SECRETARY OF DEFENSE OR HEAD
OF ANY OTHER FEDERAL AGENCY, TO THE EXTENT DEEMED NECES-
SARY IN THE INTEREST OF NATIONAL DEFENSE BY THE SECRETARY
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OF DEFENSE OR HEAD OF ANY OTHER FEDERAL AGENCY. THIS

SECTION HAS BEEN INTERPRETED AS APPLYING TO 46 USC 883 AND APPROXIMATELY 100 WAIVERS OF SECTION 883 HAVE BEEN GRANTED BY TREAS. DEPT. SINCE 1950. A LIST OF THESE WAIVERS WITH SHORT DESCRIPTIONS OF THE FACTS OF EACH EXCEPTION, IS BEING POUCHED NEXT WEEK AS SOON AS RECEIVED FROM TREASURY. UNDER THE LAW, A REQUEST FOR A NATIONAL DEFENSE WAIVER BY THE DEFENSE DEPARTMENT MUST BE GRANTED, WHEREAS A REQUEST FROM ANY OTHER FEDERAL AGENCY IS CAREFULLY RE-

VIEWED BY TREAS. OFFICIALS. MOST REQUESTS ARE NOT APPROVED BY TREAS. AND THERE MUST BE SUBSTANTIAL EVIDENCE OF A NATIONAL DEFENSE INTEREST BEFORE A REQUEST WILL BE APPROVED.

3. IN ADDITION TO ABOVE WAIVER PROVISION, MERCHANT MARINE ACT, AS AMENDED, CONTAINS CERTAIN EXCEPTIONS FOR SPECIFIC TYPES OF TRANSPORTATION. LAST TWO EXCEPTIONS ARE APPLICABLE TO COASTWISE TRADE BY FOREIGN VESSELS TRANSPORTING CERTAIN EMPTY ARTICLES, INCLUDING CONTAINERS AND BARGES, AND TO TRANSPORTATION OF MERCHANDISE TRANSFERRED BETWEEN TWO LASH-TYPE BARGES. (SEE COPY OF STATUTE BEING POUCHED). THESE EXCEPTIONS MAY BE MADE BY SECRETARY OF TREAS. ONLY UPON FINDING, PURSUANT TO INFORMATION OBTAINED AND FURNISHED BY THE SECRETARY OF STATE, THAT THE GOVERNMENT OF THE NATION OF REGISTRY EXTENDS RECIPROCAL PRIVILEGES TO VESSELS OF THE UNITED STATES. A NUMBER OF NATIONS HAVE BEEN FOUND TO MEET THESE REQUIREMENTS. (SEE COPY OF REGULATIONS BEING POUCHED). FIRST THREE EXCEPTIONS IN SEC. 833 CONCERN TRANSPORTATION IN SPECIFIC AREAS SUCH AS UPON YUKON RIVER. EXCEPTIONS ARE MADE ON INDIVIDUAL COMPANY OR VESSEL BASIS, BUT TREAS. DEPT. IN WASHINGTON DOES NOT HAVE INFORMATION TO ESTIMATE TOTAL NUMBERS.

4. COMMENT: CONTENTION THAT ONLY ONE EXCEPTION HAS BEEN GRANTED TO SECTION 27 OF MERCHANT MARINE ACT IS NOT CORRECT. THIS LAW IS RIGIDLY ENFORCED BY OFFICERS OF THE U.S. CUSTOMS SERVICE OF DEPT. OF TREAS. AND THERE IS MUCH INTEREST AND PRESSURE FROM CONGRESS AND RELEVANT UNIONS TO SEE THAT IT IS ENFORCED STRICTLY. HOWEVER, WAIVERS OR EXCEPTIONS ARE GRANTED UNDER SPECIFIC STATUTORY AUTHORITY (ACT OF DEC. 27, 1950 AND SECT. 883) WHERE APPLICABLE REQUIREMENTS ARE MET. INGERSOLL

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RITY (ACT OF DEC. 27, 1950 AND SECT. 883) WHERE APPLICABLE REQUIREMENTS ARE MET. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARINE TRANSPORTATION, MARITIME LAW, MERCHANT SEAMEN
Control Number: n/a
Copy: SINGLE
Draft Date: 24 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE017385
Document Source: CORE
Document Unique ID: 00
Drafter: SCH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750028-0559
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750122/aaaaaswo.tel
Line Count: 109
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 MELBOURNE 0065
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 09 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 APR 2003 by RuthemTJ>; APPROVED <17 FEB 2004 by KelleyW0>; APPROVED <02 MAR 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: REQUEST FOR INFORMATION TO ASSIST FEDERAL JUDICIAL INQUIRY
TAGS: ELAB, AS
To: MELBOURNE CINCPAC
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006